IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY THIRD DAY OF SEPTEMBER
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION No. 6458 of 2005

Between:

Mutyala Nageswara Rao and another

..... PETITIONERS

AND

The Chief Executive Officer,

A.P.State Wakf Board, Haj House Complex,
Nampally, Hyderabad and another

.....RESPONDENTS

ORDER:

Seeking a Mandamus, declaring the proceedings No.32/Prot/M6/WG/04, dated 18.12.2004 issued by the 1st respondent, as illegal and arbitrary, the present writ petition is filed.

It is the case of the petitioners that they are the absolute owners of the property in question and they have been in possession and enjoyment of the same since 1963 and the respondent Wakf Board has neither title nor possession over the said property, and without following due procedure as contemplated under Section 54 (3) of the Wakf Act, 1995, the 1st respondent issued the impugned proceedings.

Heard the learned counsel for the petitioners and the learned standing counsel for the 1st respondent.

The learned counsel for the petitioners contended that the procedure required under Section 54 (3) of the Wakf Act, 1995 has not been followed and no enquiry has been conducted by the 1st respondent, and therefore, the principles of natural justice have been violated.

On the other hand, the learned standing counsel appearing for the 1st respondent-Wakf Board contended that there is wakf property and the Chief Executive Officer cannot decide the title, and therefore, the petitioners have to invoke the provisions under Section 54 (4) of the Wakf Act, 1995, and hence he prays to dismiss the writ petition.

The claim of the petitioners is based upon registered sale deeds said to have been executed by their respective vendors in respect of the property in question. The impugned proceedings go to show that the property in question belongs to the Wakf Board. Therefore, the title of the parties has to be decided after adducing necessary evidence by the competent court of civil jurisdiction. In view of the provisions under Section 54 (4) of the Wakf Act, 1995, the remedy of the petitioners is to file a suit before the Tribunal or other competent court of civil jurisdiction so as to decide the

title.

The learned counsel for the petitioners placed strong reliance on a decision rendered by the Supreme Court in ***Harbanslal Sahnia v. Indian Oil Corporation Limited*** wherein it is held:

> "So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

There is no dispute with regard to the above proposition laid down by the Supreme Court. In the case on hand, the title of the parties is in dispute. Therefore, the title to the property in question cannot be decided and determined by this Court by exercising its jurisdiction under Article 226 of the Constitution of India.

The learned counsel for the petitioners brought to the notice of this Court that the report of the Inspector Auditor Wakf, basing on which the impugned proceedings issued, has not been furnished to the petitioners. In reply, the learned standing counsel appearing for the

1st respondent Wakf Board stated that there is a procedure contemplated for obtaining copy of report of the Inspector Auditor Wakf by paying necessary fee. In that view of the matter, the petitioners can obtain certified copy of the report of the Inspector Auditor Wakf by following the due procedure.

Since there is a dispute with regard to title to the property in question, this Court cannot entertain this writ petition, and the writ petition is devoid of merit and liable to be dismissed.

Accordingly, the Writ Petition is dismissed. No order as to costs.

K.C. BHANU,J

Dated: 23.09.2005

Dsr